

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALFRED LEWIS,	§	
	§	No. 622, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0812009803
Appellee.	§	

Submitted: March 17, 2010

Decided: May 11, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 11th day of May 2010, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In April 2009, the appellant, Alfred Lewis, was indicted on charges of Possession with Intent to Deliver Marijuana, Possession with Intent to Deliver Cocaine, Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, two counts of Maintaining a Vehicle for Keeping Controlled Substances, and four counts of Possession of a Firearm During the Commission of a Felony. On September 29, 2009, Lewes pled guilty to two counts of Possession of a

Firearm During the Commission of a Felony and was immediately sentenced, as contemplated by the plea agreement, to a total of ten years at Level V incarceration followed by six months at Level III probation. This is Lewis' direct appeal.

(2) On appeal, Lewis' defense counsel has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"). Lewis' counsel asserts that, based upon a careful and complete examination of the record, there are no arguably appealable issues.

(3) The standard and scope of review of a motion to withdraw and an accompanying brief under Rule 26(c) is two-fold. First, the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal.¹ Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(4) Defense counsel provided Lewis, as required, with a copy of the motion to withdraw, the Rule 26(c) brief and appendix, and the transcript of the September 29, 2009 guilty plea hearing and sentencing. Defense counsel

¹ *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

² *Id.*

also advised Lewis by letter that he had a right to supplement the brief and to file a response to the motion to withdraw.

(5) In response to his defense counsel's letter, Lewis submitted what the State aptly describes as a 23-page "litany of challenges to his convictions." The State has responded to Lewis' submission as well as the Rule 26(c) brief and has moved to affirm the judgment of the Superior Court.

(6) Lewis' submission argues the following claims: defective indictment, malicious prosecution, excessive bail, trial court error when denying a motion to suppress, discovery violations, lack of subject matter jurisdiction, due process violations, a double jeopardy violation, false police affidavits and illegal search. Lewis also argues that his guilty plea was involuntary.

(7) The disposition of all of Lewis' claims hinges on the Court's determination of one claim, namely that his guilty plea was involuntary. It is well-settled that a knowing and intelligent guilty plea waives any objection to alleged errors or defects occurring prior to the entry of the plea.³

(8) The record in this case reflects that Lewis intelligently and voluntarily entered his guilty plea with full knowledge of the rights that he

³ *Powell v. State*, 2010 WL 572129 (Del. Supr.) (citing *Miller v. State*, 840 A.2d 1229, 1232 (Del. 2003)).

was waiving as a result of pleading guilty. In the absence of clear and convincing evidence to the contrary, Lewis is bound by his sworn statements during the guilty plea colloquy.⁴

(9) The Court has reviewed the record carefully and has concluded that Lewis' appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that defense counsel made a conscientious effort to examine the record and the law and properly determined that Lewis could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁴ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).